

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**HARVEY BREWER,**

**Petitioner,**

**v.**

**Civil Action No. 2:11cv35  
(Judge Bailey)**

**KUMA J. DEBOO, et al.,**

**Respondents.**

**REPORT AND RECOMMENDATION THAT APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF FEES BE DENIED**

On April 25, 2011, the *pro se* petitioner, Harvey Brewer, filed a Petition for Writ of Mandamus together with a Motion for Leave to Proceed *in forma pauperis*. On May 5, 2011, the petitioner filed a Prisoner Trust Account Fund Statement and Consent to Collection of Fees. On May 17, 2011, the petitioner filed his Prisoner Trust Fund Ledger Sheets.

The ledger sheets reveal that the petitioner had an account balance of \$1640.87 as of May 15, 2011. On April 29, 2011, the Business Administrator at FCI Gilmer indicated that the petitioner's balance was \$1673.72, with an average monthly balance of \$1132.17 during the preceding six months. Consequently, the petitioner had sufficient funds to pay the \$350.00 filing fee. Accordingly, the petitioner's request to proceed without prepayment of fees should be denied, and he should be ordered to pay the full filing fee. The petitioner should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of his petition.

Within fourteen (14) days after being served with a copy of this Recommendation, the petitioner may file with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such

objections should also be submitted to the Honorable John Preston Bailey, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985) United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

DATED: 5-17-2011

  
\_\_\_\_\_  
DAVID J. JOEL  
UNITED STATES MAGISTRATE JUDGE